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Department of Banking, Insurance, Securities  
and Health Care Administration  
Division of Health Care Administration

## CERTIFICATE OF NEED

**DATE:** April 12, 2007

**RE:** Docket #06-013-H:

**Application by the Vermont Department of Health for Conceptual Certificate of Need to create new inpatient programs to enhance psychiatric inpatient care and replace the functions currently performed by Vermont State Hospital**

**Estimated costs (planning): \$2,405,000 (low range) to \$4,355,000 (high range)**

### ***I. PROJECT DESCRIPTION AND SCOPE***

In accordance with 18 V.S.A. § 9440(d), and 8 V.S.A. § 15, the Department of Banking, Insurance, Securities and Health Care Administration hereby issues a Conceptual Certificate of Need to the Vermont Department of Health to create new inpatient programs to enhance psychiatric inpatient care and replace the functions currently performed by Vermont State Hospital. A Conceptual Certificate of Need is a pre-requisite to a subsequent, Phase II Certificate of Need that would be required before project implementation could begin.

The capital cost shall not exceed \$4,355,000.

The rationale for approving this proposed project is to permit the Vermont Department of Health to undertake the architectural, engineering and planning activities needed to prepare and file a Phase II Certificate of Need application. The architectural, engineering and planning activities shall include the following:

1. Plan to create new community capacities to reduce reliance on inpatient care, including throughout the next few years the following community capacities: residential services at the sub-acute and secure levels of care, crisis stabilization beds, peer support services, housing, transportation and a system of care management.
2. Carry out feasibility analyses of multiple options and to develop detailed plans for the most feasible models.
3. Incur planning expenditures to develop two new levels of inpatient psychiatric care:

- Under the license of Fletcher Allen Health Care (FAHC) to develop programming at the specialized and intensive levels of care:
    - A. Create a 40-bed stand alone psychiatric hospital on or off the Burlington campus, or
    - B. Create a 40-bed program that is physically integrated with FAHC's existing inpatient services, or
    - C. Create a 68-bed program combining FAHC's current 28-bed program with 40 new beds physically integrated with the inpatient services

and

  - Under the License of Rutland Regional Medical Center:  
 Establish 6 new psychiatric inpatient beds at the specialized level of care with the current program at Rutland Regional Medical Center via renovations and/or new construction to optimize current inpatient programming and bed capacity.

and

  - Under the license of Retreat Healthcare:  
 Establish the capability to provide up to 6 psychiatric inpatient beds at the specialized level of care at the Retreat Healthcare.
4. If developing new capacities at Rutland Regional Medical Center or the Retreat Healthcare does not prove feasible, consider increasing the number of beds planned for the primary program with FAHC. In addition, through the Phase II process, study other options that may become apparent.
  5. Explore other options that might emerge during the detailed planning processes in Phase II.
  6. Develop the program model for Intensive and Specialized levels of care.
  7. Outside review of the program model for consistency with accreditation standards, appropriateness for the population to be served, and cost-effectiveness.
  8. Cost modeling to implement the program model in both integrated and stand-alone settings, and with the proposed partners.
  9. Architectural work to refine the "program of space" based on the program model developed.
  10. Assess feasibility of on-and off campus sites for the primary program and campus sites for the smaller capacities based on the refined architectural program of space.
  11. Develop partnership agreements for construction/renovation, and management phases.
  12. Refine cost modeling for program operations and construction/renovation.
  13. Develop architectural plans, site plans, and construction engineering.

14. Perform impact assessments including traffic studies, air pollution, waste water, and impact on the housing, human services and first responders of host communities.
15. Determine where to develop new crisis beds in consultation with the designated agency provider system, and informed by the recommendations of the mental health stakeholder community and the opportunities and feasibility of options identified by the designated agency provider network.
16. Determine what new peer support services will be implemented in consultation with the Vermont Psychiatric Survivors, informed by the recommendations of the mental health stakeholder community and the opportunities and feasibility of options identified by the peer community.
17. Develop a series of recommendations which include (but is not limited to) expanded resources for rental assistance subsidies and the creation of a housing development fund; determine what new housing services will be implemented in consultation with the AHS Housing and Transportation Coordinator, informed by the recommendations of the mental health stakeholder community and the opportunities and feasibility of options identified by the housing and not-for-profit housing development community, within appropriated resources.
18. Pilot and develop alternatives to transportation to involuntary care via Sheriff.
19. Obtain information regarding how other states, both in terms of facilities and programs, serve their patient populations most similar in need to the patients at the Vermont Department of Health ("VDH").
20. Determine the staffing model for the intensive and specialized levels of care.
21. Explore the preferred option to develop a 68-bed program on the main campus of Fletcher Allen with physical connection to the inpatient care services. This would include FAHC's current psychiatric inpatient service.
22. If the preferred option is not feasible to develop, explore developing a 40 bed capacity on or off the Burlington campus.
23. Explore other options, including but not limited to: purchasing an existing facility, and building on available land at or near other hospitals.
24. Refocus on the development of secure residential capacity and work to establish program planning and development activities for secure residential services with the designated agency service providers.
25. Determine the impact of VDH's plans to create 16 community residential recovery beds at the sub acute level of care if adequate resources are appropriated by the legislature.
26. Determine the capacity of the proposed VSH replacement re: high security patients.
27. Determine how VDH expects to fund the project to replace the facilities and relocate the services of the Vermont State Hospital.

28. Determine how implementation of this project will improve the coordination of the continuum of mental health care, from primary care providers to the community partners, to the designated hospitals, to the Vermont State Hospital and prisons.
29. Assess the impact the project will have on the identified need for new supportive housing resources for Vermont's citizens with mental illness and how adequate housing will facilitate discharge and limit the need for additional inpatient beds.
30. Conduct planning that occurs in the context of considering the overall financial health of the designated hospital and agency service providers.
31. Evaluate the current plan for 50 inpatient beds and the plan's adequacy in light of concerns expressed by the Howard Center about the assumptions regarding the impact of step-down and sub-acute services expansion as well as enhanced peer services models.
32. Explore the issue of affordable housing in the Burlington community with respect to impacts resulting from changes in the location of Vermont State Hospital beds.

## **II. *TIMELINE***

Letter of Intent	06/20/06
Certificate of Need Application	08/17/06
Application ruled complete	11/13/06
Public Oversight Commission Hearing	12/13/06
Notice of Proposed Decision	4/2/07
Hearing on Proposed Decision	4/9/07
Date of granting of Certificate of Need	4/12/07

## **III. *REQUIREMENTS***

This Conceptual Certificate of Need is subject to the following terms, conditions and requirements:

1. The Applicant shall comply with the scope of the project as designated in the Application. The Applicant shall also comply with all local and state ordinances, rules, laws and regulations applicable to the project, as such compliance is material to the granting of this Conceptual Certificate of Need.
2. Noncompliance with any provision of this Conceptual Certificate of Need or with any such ordinances, rules, laws or regulations may, at the Commissioner's discretion, constitute a violation of this Conceptual Certificate of Need and may be cause for enforcement action pursuant to 8 V.S.A. §15, 18 V.S.A. §9445 and any other applicable laws and rules. The Applicant shall notify the Commissioner if the Applicant's obligations with respect to any legislative action taken while this proceeding is pending, or during the planning period, conflicts with the terms and conditions of the Applicant's Conceptual Certificate of Need.

3. This Conceptual Certificate of Need is not transferable or assignable and is issued only for the premises and persons named in the application, provided that any successor agency to the Applicant is authorized to engage in the planning activities authorized by the Applicant's Conceptual Certificate of Need, in accordance with its terms, conditions and requirements.
4. This Conceptual Certificate of Need is limited to the architectural, engineering and other planning activities described herein.
5. If the Applicant contemplates or becomes aware of a non-material or material change to the scope or cost of the project described in its application and as designated in this Conceptual Certificate of Need, the Applicant shall file a notice of such change immediately with the Division. The Division shall review the proposed change and advise the Applicant whether the proposed change is subject to review under chapter 221 of Title 18, Vermont Statutes Annotated.
6. For purposes of this Conceptual Certificate of Need the terms "material change" and "nonmaterial change" shall be defined as in sections 8F and 8G, respectively, of Regulation H-99-3, Certificate of Need Regulations adopted November 29, 1999, and Bulletin 112, dated March 12, 2004 as amended.
7. The Applicant shall file implementation reports with the Division, with copies to the interested parties, six months after the date of issuance of this Conceptual Certificate of Need and at six-month intervals thereafter until the Phase II CON Application is filed.
8. The implementation reports shall include the following information and analysis:
  - a. An overview of the project, including unanticipated need for changes to the project.
  - b. A description of the progress made toward completion of the project, including detailed assessment of the extent to which the project is on schedule.
  - c. A spreadsheet statement of the expenditures made, from the advent of the project and from the date of the prior implementation report. This spreadsheet must be organized by project planning component and must detail by line item each expense within each planning component.
  - d. Financial obligations incurred.
  - e. Certification that no material or non-material changes are contemplated or have occurred.
9. The Commissioner, in her or his discretion, and after notice and an opportunity to be heard, may make such further orders as are necessary or desirable to accomplish the purposes of this Conceptual Certificate of Need, and to ensure compliance with the terms and conditions of this Conceptual Certificate of Need.
10. The Commissioner, in her or his discretion, and after notice to the parties and an opportunity to be heard, may order the earlier termination or amendment of these Conceptual Certificate of Need conditions, either on the Commissioner's own

motion or upon a showing by a party that the condition is no longer necessary or that changed circumstances justify amendment of the condition.

11. All reports, notices, forms, information or submissions of any kind required to be submitted to the Division or the Commissioner as a condition of this Conceptual Certificate of Need shall be signed by the Applicant's agency head and verified by the agency head, or by her or his designated representative. Such verification shall be made on the form prescribed by HCA Bulletin No. 112 or by administrative rule, as applicable.
12. The project as approved, specifically the activities described in Finding Nos. 17 through 20 of this Statement of Decision and the activities required by the Conditions and Requirements attached to the Certificate of Need, shall be implemented within two years from the date of this Conceptual Certificate of Need or the Conceptual Certificate of Need shall become invalid and be deemed revoked.
13. The planning activities authorized by this Conceptual Certificate of Need shall explore and consider those alternative solutions for an inpatient psychiatric facility which provide a satisfactory and appropriate balance of the priorities of the Health Resource Allocation Plan, and achieve the least expensive capital and operating cost. Consideration of alternative solutions shall include, if necessary to meet the Applicant's burden of proof, consideration of a replacement facility that is owned and/or operated by the State of Vermont.
14. The planning activities authorized by this Conceptual Certificate of Need shall review and include in the Phase II CON Application appropriate consideration of the need for inpatient mental health treatment for inmates and other offenders subject to the state correctional system, after giving due consideration for the overall mental health treatment capacity of the correctional system. The planning activities authorized by this Conceptual Certificate of Need shall appropriately address issues associated with commingling of inmates and other patients.
15. The planning activities authorized by this Conceptual Certificate of Need shall develop information and analysis describing a long range perspective of the funding needs and sources of adequate funding for the inpatient facility and for the community mental health system, and include such information and analysis in the Phase II CON Application so that the review process for the Phase II CON will be able to consider whether there will be an appropriate balance between the fiscal and other needs of the inpatient facilities, and the fiscal and other needs of the community mental health system. The information and analysis relating to this long term perspective should also include flexibility in plans and facilities to make efficient adaptations to changing clinical and inpatient population requirements.
16. The planning activities authorized by this Conceptual Certificate of Need shall include sufficient research and analysis of systems in place or planned in other states to permit assessment of the effectiveness of the Phase II CON plan's preferred alternative, and thereby permit the Phase II CON review process to

consider whether the Applicant has met its burden of proof with respect to the statutory criteria.

17. The planning activities authorized by this Conceptual Certificate of Need shall include the development of sufficient financial and operational information and analysis as to the Applicant's partners or participants in the replacement inpatient facility such that when the Phase II CON Application is reviewed, the Applicant will be able to meet its burden of demonstrating compliance with the relevant Certificate of Need criteria, including information concerning the cost of the project and its impact on the Applicant and its partners and participants. If necessary to meet its burden of proof, the Application shall include in its Phase II CON Application any relevant agreements with the Applicant's partners or participants on issues of operation, finances, accountability and management responsibilities.
18. The planning activities authorized by this Conceptual Certificate of Need shall permit the Applicant to include in the Phase II CON Application sufficient information concerning quality of care at the proposed facility that will permit the Applicant to demonstrate consistency with the relevant HRAP quality of care standards. In particular, the Phase II CON Application shall demonstrate that a sufficient number of professional staff and other trained staff will be available to adequately and appropriately support the replacement facility.
19. The Applicant shall establish a planning schedule, approved by the Division, that includes specific and achievable timetables and planning benchmarks for the completion of the planning process as soon as possible, and no later than the two years permitted by the Applicant's Conceptual Certificate of Need. The planning schedule shall include specific and achievable timetables and planning benchmarks for mental health consumer and other stakeholder participation.

SO ORDERED this 12th day of April, 2007.



Herbert W. Olson, Esq.  
Commissioner's Designee and General Counsel  
Department of Banking, Insurance, Securities, and  
Health Care Administration

Cc: Project File  
Vermont Department of Health  
Interested parties  
Amicus Curiae